

STATE OF CALIFORNIA
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS

CHAPTER 1. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES

PROPOSED TEXT

Text proposed as a new regulation, or to be added to an existing regulation, is shown in underlined type. Text to be deleted from an existing regulation is shown in ~~strikeout~~ type.

(1) Amend section 640 to read as follows:

§ 640 Presentation of Claim.

Claims on behalf of persons erroneously convicted of felonies shall be ~~filed in duplicate and shall be in substantially the following form; filed on an "Erroneously Convicted Person Claim Form," Rev. January 1, 2010, hereby incorporated by reference, and provided by the Board or obtained on the Board's website.~~

~~BEFORE THE BOARD OF CONTROL OF THE STATE OF CALIFORNIA~~

~~In the Matter of the Claim of)~~

~~_____)~~

~~against the State of California)~~

~~The undersigned Claimant makes claim against the State of California in the sum of _____ dollars, and in support of said claim represents as follows:~~

- ~~1. (Name of the felony for which he was convicted, title of the court in which the conviction was had, the date of conviction and length of sentence imposed.)~~
- ~~2. (State prisons in which the sentence was served, length of time incarcerated and the dates thereof.)~~
- ~~3. (Facts showing (a) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, (b) that he neither intentionally nor negligently contributed to his arrest and conviction.)~~
- ~~4. (Facts showing the pecuniary injury sustained by him through his erroneous conviction and imprisonment.)~~
- ~~5. (The date of whichever is the latest of the following acts (a) the judgment of acquittal, (b) the discharge, (c) the grant of the pardon, or (d) the release from imprisonment.)~~

~~Respectfully submitted.~~

~~By _____~~

~~Dated: _____~~

~~Address~~

~~STATE OF CALIFORNIA,)~~

~~County of _____)~~

~~_____, being by me first duly sworn, deposes and says: That he is the Claimant above named, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true~~

~~Subscribed and sworn to before me this _____ day of _____, 19____.~~

Notary public in and for the County of _____, State of California.

(a) Claimants must include an original and one copy of the following:

- 1) claim form, and;
- 2) supporting documentation

(b) Upon receipt of a claim, the Board will provide the copy of the claim and one (1) copy of the supporting evidence and documentation to the California Attorney General. The Attorney General may offer evidence in support of or in opposition to the claim. If the Attorney General provides any evidence to the Board, it shall also provide a copy to the Claimant.

(c) Pecuniary injury may be established by showing that: the claimant was gainfully employed prior to being incarcerated; the claimant could have been gainfully employed if not for being incarcerated; or by other evidence showing that, as a result of being incarcerated, the claimant suffered a monetary loss.

Note: Authority cited: Sections 11400.20, 13920, Government Code.

Reference: Sections 4900 through 4906, Penal Code.

(2) Adopt proposed section 641:

§ 641 Rejection of Claim.

(a) Claims that are untimely or are otherwise not in compliance with Penal Code sections 4900 and 4901 will be rejected and will not be heard or considered by the Board.

(b) Prior to denying a hearing for failure to timely file a claim or for failure to state facts constituting a claim under Penal Code sections 4900 and 4901, the claimant shall be:

(1) notified of the reason for rejecting the claim and,

(2) given thirty (30) calendar days to present evidence that will overcome the rejection.

(c) If the claimant's response provides sufficient evidence to prove that the claim was timely filed and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be timely scheduled for a hearing.

(d) If the claimant's response does not provide sufficient evidence to prove that the claim was timely filed and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be rejected without a hearing and will not be considered by the Board.

Note: Authority cited: Sections 11400.20, 13920, Government Code.

Reference: Sections 4900 through 4906, Penal Code.

(3) Amend section 642:

§ 642.—Burden of Proof. Evidence in Support of Claim.

(a) In reaching its determination of the merits of the claim, claimant's mere denial of the commission of the crime for which he was convicted; reversal of the judgment of conviction on appeal; acquittal of claimant on retrial; or, the failure decision of the prosecuting authority not to retry claimant for the crime, may be considered by the Board but will not be deemed sufficient evidence to warrant the Board's recommendation that claimant be indemnified in the absence of substantial independent corroborating evidence that claimant is innocent of the crime charged.

(b) The Board may consider as substantive evidence the prior testimony Testimony of witnesses claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for to which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the crime with which he was charged, may be considered by the Board as substantive evidence.

(c) All relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

(d) Evidence that qualifies under subdivision (c) may be admitted even though there is a common law or statutory rule which might make its admission improper over objection in any other proceeding.

(e) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

(f) The Board may also consider any other information that it deems relevant to the issue before it.

Note: Authority cited: Sections 11400.20, 13920, Government Code.
Reference: Sections 4900 through 4906, Penal Code.

(4) Adopt proposed section 643:

§ 643 Pre-Hearing Conference.

(a) The hearing officer may conduct a pre-hearing conference in person or by electronic means.

(b) The parties shall receive reasonable notice of the time and location of a pre-hearing conference.

(c) A pre-hearing conference may address any of the following:

(1) clarification of issues;

(2) identity of witnesses;

(3) exchange of witness lists;

(4) limitation of the number of witnesses;

(5) limitation of the scope of a witness' testimony;

(6) limitation of time allocated to a party's presentation of evidence;

(7) limitation of time allocated to a party's cross-examination of witnesses;

(8) exchange of exhibits;

(9) objections to evidence;

(10) order of presentation of evidence;

(11) order of cross-examination of witnesses;

(12) stipulations;

(13) pre-hearing motions; and

(14) any other matters that will promote the orderly and efficient conduct of the hearing.

Note: Authority cited: Sections 11400.20, 13920, Government Code.

Reference: Sections 4900 through 4906, Penal Code.

(5) Adopt proposed section 644:

§ 644 Conduct of Hearing.

(a) Hearings shall be open to public observation, unless otherwise provided by law.

(b) Hearings will be conducted in Sacramento unless the Board agrees to an alternative location.

(c) The claimant has the burden of proof on all issues necessary to establish eligibility.

(1) The standard of proof is a preponderance of the evidence.

(d) The parties shall present evidence in the following order:

(1) the claimant;

(2) the Attorney General;

(3) the claimant, if he or she desires to offer any evidence or testimony to rebut the Attorney General's evidence or argument.

(e) The hearing officer may determine the amount of time allotted to present a claim for compensation. The determination made under this subsection shall be based on the following factors:

(1) complexity of legal or factual issues;

(2) necessity to evaluate credibility of witnesses for a proper determination of issues;

(3) parties' representation by legal counsel;

(4) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(5) any other factor likely to affect a just and proper determination of issues.

(f) If a claimant fails to appear at the hearing or fails to proceed, the Board may base its decision on previously submitted evidence.

(g) A party that requests that all or part of a hearing be conducted by electronic means under California Code of Regulations section 617.4 may be responsible for providing, operating, and paying for all necessary equipment.

(h) The hearing will be recorded by electronic means at the expense of the Board.

(i) Any party may request the Board to arrange for the preparation of a hearing transcript. The party requesting the preparation of a hearing transcript shall bear all

costs for its preparation and shall provide one copy of the transcript to the Board at no cost to the Board.

(j) The hearing officer may allow or request the parties to submit post-hearing briefs.

(1) Post-hearing briefs shall be limited to legal and factual arguments related to relevant issues under section Penal Code sections 4900 et seq. or identified by the hearing officer.

(2) The hearing officer shall inform the parties of the deadline for the submission of a post-hearing brief.

(k) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless the hearing officer orders otherwise.

(l) In a hearing in which post-hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post-hearing briefs, unless the hearing officer orders otherwise or grants an extension.

(m) No argument will be considered by the hearing officer after the close of the hearing record, except as allowed in California Code of Regulations section 619.4, unless the hearing officer orders otherwise.

(n) The hearing officer retains the discretion to reopen the hearing record for good cause.

(o) The formal hearing provision of the Administrative Procedure Act (Government Code §§ 11500-11529) do not apply.

(p) If there is any inconsistency or conflict between the provisions of California Code of Regulations Article 2.5 and this article, the provisions of this article shall apply.

(q) At the request of the claimant, the Attorney General, or other interested party, the Board will provide information about the hearing rules and procedures.

Note: Authority cited: Sections 11400.20, 13920, Government Code.

Reference: Sections 4900 through 4906, Penal Code; Diola v. Board of Control (1982) 135 Cal.App.3d 580, 588, fn 7; Tennison v. Victim Compensation and Government Claims Board (2007) 152 Cal. App. 4th 1164.

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(6) Adopt proposed section 645:

§ 645 Proposed Decision by Hearing Officer.

(a) The hearing officer shall take the matter under submission at the conclusion of the hearing.

(b) The hearing officer shall prepare a proposed decision that is written and contains a statement of the factual and legal bases for the proposed decision.

(c) If the factual basis for the proposed decision includes a determination based substantially on the credibility of a witness, the proposed decision shall identify specific evidence that supports the credibility determination, which may include but is not limited to demeanor, manner or attitude.

(d) The proposed decision shall be based on evidence in the hearing record and on matters subject to official notice under California Code of Regulations section 617.8.

(e) The hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.

Note: Authority cited: Sections 11400.20, 13920, Government Code.
Reference: Sections 4900 through 4906, Penal Code.